Order dated 13rd July, 2005

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6938 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER G.S.R.T.C. - Petitioner(s)

Versus

BHIKHU GIGA AGOLIYA -CONDUCTORTHROUGH SECRETARY - Respondent(s)

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Appearance :

MRS VASAVDATTA BHATT for Petitioner No(s).: 1.
NOTICE SERVED BY DS for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE M.R. SHAH

Date : 13/07/2005

ORAL JUDGMENT

In this petition, notice for final disposal is already issued and inspite of service of notice

nobody appears on behalf of the respondent. The matter is adjourned time and again still nobody appears on behalf of the respondent. Under the circumstances, this Court has no other alternative but to decide and dispose of the present petition in absence of representation on behalf of the respondent.

2. In this petition under Article 226 / 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and award dated 16.9.1994 passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 227/1996 in partly allowing the same by interfering with the order of punishment imposed by the disciplinary authority by reducing it to withholding of 3 increments without permanent effect from withholding of 3 increments with permanent effect.

3. The respondent workman was serving as a Conductor. It was alleged against him that while he was on duty on 10th January 1994 when there was a raid by the checking squad it was found that he had not issued tickets to 16 passengers, however on seeing the checking squad he had hurriedly tried to give tickets and had given tickets to some another passenger who was not part of the aforesaid 16 passengers (group of 16 passengers), and with further

allegation that two passengers were found to be without tickets and the respondent workman had not issued tickets to those 2 passengers and that in fact Way Bill was also kept open, and when the Way Bill was asked it was found be in torn condition. On the aforesaid allegations departmental enquiry was initiated against the respondent workman. On conclusion of the departmental enquiry and after holding that the charge levelled against the respondent workman is proved the disciplinary authority by order dated 11.12.1995 imposed punishment of withholding of 3 increments with permanent effect. Being aggrieved and dissatisfied with the same the respondent workman preferred appeal before the first appellate authority which came to be dismissed. Being further aggrieved, the respondent workman raised an industrial dispute which was referred to the Industrial Tribunal, Ahmedabad for adjudication being Reference (IT) No. 227/1996. The Industrial Tribunal by judgment and award dated 16.9.2004 partly allowed the aforesaid Reference and interfered with the order of punishment mainly on the ground that only two passengers were found to be without tickets and that there was no dishonest intention on the part of the respondent workman and held that there was negligence on the part of the respondent workman in issuing two tickets less and in not closing the Way Bill and not making any entry with regard to the tickets issued to 16 passengers, and accordingly reduced the punishment of withholding

of 3 increments without permanent effect. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Ahmedabad dated 16.9.2004 in Reference (IT) No. 227/1996 in partly allowing the same and interfering with the order of punishment imposed by the disciplinary authority and reducing the same to withholding of 3 increments without permanent effect, the petitioner Corporation has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Ms. Vasavdatta Bhatt, learned advocate appearing on behalf of the Corporation has vehemently submitted that there is misappreciation of evidence on the part of the Tribunal and that the Tribunal has not considered the evidence in its true perspective and has materially erred in holding that there was negligence on the part of the respondent workman in issuing 2 tickets less. She has submitted that looking to his conduct that on seeing the checking squad the respondent workman hurriedly tried to issue tickets to 16 passengers and in that process he had given 16 tickets to one another passenger who was not part of the group of 16 passengers it shows the dishonest intention on the part of the respondent workman; in fact he had not issued the tickets to 16 passengers; it was not a question of issuing two tickets less; considering the aforesaid conduct on

the part of the respondent workman in fact in all 18 tickets were not issued; on seeing the checking squad he had tried to issue the tickets to a group of 16 passengers and in that exercise he had given the tickets to some third party who was not part of the aforesaid group; and hence the Industrial Tribunal has materially erred in interfering with the order of punishment imposed by the disciplinary authority. She has also further submitted that statements of two passengers, namely one Shri KN Mehta and one Shri Jetha Kana have not been properly appreciated by the Industrial Tribunal and if those statements were considered in its true spirit then the Industrial Tribunal would not have interfered with the order of punishment imposed by the disciplinary authority. She has also further submitted that non-issuance of tickets is a serious misconduct of causing loss to the Corporation. Relying upon the judgment of the Hon'ble Supreme Court in the case of Janatha Bazar (South Kanara Central Cooperative wholesale Stores Ltd) And Others Vs. Secretary, Sahakari Noukarara Sangh And Others, reported in (2000) 7 SCC Page 517 she has submitted that irrespective of the smallness of the amount once an act of misappropriation is proved may be for a small or a large amount there is no question of showing uncalled for sympathy more particularly to interfere with the order of punishment when in the present case the punishment was only withholding of 3 increments with permanent effect and leniency is

shown by the petitioner in not dismissing the respondent workman from service. Under the circumstances, it is requested to allow the present Special Civil Application.

5. As stated hereinabove, though served nobody appeared on behalf of the respondent workman and the matter was adjourned time and again. It is not in dispute that the respondent workman was serving as a Conductor. As held by the Hon'ble Supreme Court as well as by this Court in catena of judgments, the post of Conductor is the post of 'trust' and it is the Conductor who is required to take care of the interests of the Corporation in issuing the tickets to the passengers and to see that there is no loss caused to the Corporation. The allegation levelled against the respondent workman Conductor was that while he was on duty there was a raid of checking squad and on seeing the checking squad he had hurriedly tried to issue the tickets to one group of 16 passengers and in that exercise instead of giving tickets to proper persons he had in fact given tickets in hand of one passenger who was not part of the group of 16 passengers. It is also alleged against the respondent workman that in fact apart from the aforesaid allegation it was also found that there were two tickets less of the total tickets issued by him. Apart from the statement of the reporter there are two statements of two passengers.

Out of those two, one Shri K.N. Mehta has stated that on seeing the Checking Officer the Conductor had hurriedly issued the tickets; he was given tickets as he was sitting just near the Conductor; he is not aware for what purpose those tickets were given to him; he was travelling alone in the bus; and there was no passenger with him meaning thereby he was not part of the group of 16 passengers for whom 16 tickets were to be issued. This shows the conduct on the part of the respondent workman and on the basis of the aforesaid statement it is to be construed that in fact the respondent workman had not issued the tickets to the group of 16 passengers but on seeing the Checking Squad he had hurriedly tried to issue the tickets. The question, therefore, was not with regard to issuance of two tickets less but it related to non-issuance of tickets of 16 passengers also and such question the Industrial Tribunal failed to consider in its true spirit and it can be said that there is misappreciation of evidence on the part of the Industrial Tribunal. The statement of one another passenger, Jetha Kana which was also recorded at the relevant time is also required to be considered and that passenger has submitted that he was part of the group of 16 passengers and that in fact he had paid Rs. 188 to the Conductor at the time of boarding the bus and till the checking squad came the tickets were not issued to him. Considering the statement of passenger Jetha Kana who was part of the group of 16 passengers, it is established beyond

doubt that in fact the tickets were not issued to 16 passengers, still the Tribunal has considered that the allegation was with regard to issuing two tickets less only. Considering the aforesaid facts and circumstances and evidence on record, it is established that 18 passengers were not issued the tickets, but on seeing the checking squad the Conductor hurriedly tried to issue 16 tickets to those group of 16 passengers. While considering the facts and circumstances coupled with the evidence on record, treating the act of respondent workman Conductor, of issuing two tickets less only as an of negligence, is nothing but a perverse finding. As stated hereinabove, considering the evidence on record, it was not a question of issuing two tickets less only, but the question was with regard to not issuing tickets to 18 passengers in all. Still, the disciplinary authority has imposed the punishment of withholding of 3 increments with permanent effect only.

6. In fact, looking to the facts and circumstances of the case on hand and considering the judgment of the Hon'ble Supreme Court in the case of R.S.R.T.C. Vs. Ghanshyam Sharma, reported in 2002(10) SCC 330, the order of dismissal or removal was warranted. As held by the Hon'ble Supreme Court in the aforesaid

decision, the act of bus conductor of carrying passengers without issuing tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. As stated above, in the present case, the disciplinary authority has imposed punishment of withholding of 3 increments with permanent effect only and the same is interfered with by the Industrial Tribunal.

7. In view of what is stated hereinabove, and in view of the evidence on record, it is required to be held that the Industrial Tribunal has exceeded in its jurisdiction in interfering with the order of punishment while reducing the order of punishment from withholding of 3 increments with permanent effect to withholding of 3 increments without permanent effect. The petition, therefore, succeeds. The judgment and award dated 16.9.2004 passed by the Industrial Tribunal in Reference (IT) No. 227 of 1996 is hereby quashed and set aside and consequently the order of punishment imposed by the disciplinary authority of withholding of 3 increments with permanent/future effect is hereby restored. Rule is made absolute. No as to costs.

[M.R. Shah, J.]

RMR